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bankruptcy for the benefit of creditors. See *In re Home Discount Co.* (D. C. 1906) 147 Fed. 538. Subdivision 5 of this section passes to the trustee property which prior to the filing of the petition the bankrupt could by any means have transferred. This refers only to the property which the bankrupt would have been legally privileged to transfer. Collier, Bankruptcy (11th ed. 1917) 1127. Clearly in the instant case the right of the bankrupt against the bank was not property of this sort. It has been held that land which a bankrupt holds in trust for another passes to the trustee in bankruptcy. *Clark* v. *Snelling* (C. C. A. 1913) 205 Fed. 240; *cf. Low* v. *Welch* (1885) 139 Mass. 33, 29 N. E. 216. But it has been held that personalty so held does not pass to the trustee in bankruptcy under Section 70 of the Act. *In re Berry* (D. C. 1906) 146 Fed. 623. The latter part of subdivision 5 refers to property which might have been levied upon. The bank account in the instant case, being trust property, could not have been levied upon and sold for the debts of the creamery. *Williams* v. *Fullerton* (1848) 20 Vt. 346; *Morrill* v. *Raymond* (1882) 28 Kan. 415; *Siemon* v. *Schurck* (1864) 29 N. Y. 598. Of course, if it be held that the bankrupt's right against the bank passed to the trustee in bankruptcy, *cf. Clark* v. *Snelling, supra,* he took such title subject to all equities. *Zartman* v. *First Natl. Bank* (1910) 216 U. S. 134, 30 Sup. Ct. 368.

CARRIERS—EXPRESS COMPANIES—RECOVERY OF GOODS AFTER PAYMENT FOR SUPPOSED LOSS.—The plaintiff's trunk, worth $175.00, was lost in the course of shipment. The defendant company paid him $50.00 in "full release and satisfaction of any and all claims account of shipping". Shortly after the trunk was found. *Held,* the plaintiff is entitled to the trunk without refunding the $50.00. *Roe* v. *American Railway Exp. Co.* (N. Y. App. Term 1st Dept. 1920) 112 Misc. 496.

Payment by a carrier of the full value of goods erroneously supposed to be lost transfers the property therein. *Cf. Hagerstown Bank* v. *Adams Exp. Co.* (1863) 45 Pa. St. 419. On the facts of the instant case, however, it would be unjust and contrary to the intention of the parties to give the payment of $50.00 the effect of a sale. They doubtless considered it merely the extinguishment of a claim for damages. *Cf. Beaty* v. *Goggan & Bro.* (Tex. 1910) 131 S. W. 631. In the absence of agreement, moreover, liens may only be created by some fixed rule of law. It would not have been proper, therefore, for the court to have created one in favor of the defendant. *First State Bank* v. *Ware* (Okla. 1918) 174 Pac. 273; *Paton* v. *Robinson* (1909) 81 Conn. 547, 71 Atl. 730. Therefore, since title was in the plaintiff and the express company had no lien, the former was entitled to immediate possession. The court was not called upon to consider whether the defendant could, in a separate action, recover the money paid. This would depend upon the basis of the settlement. If the trunk seemed, beyond doubt, permanently lost, and the payment was made on this assumption, there was a mistake of fact which would entitle the company to recover the amount paid, inasmuch as the risk of subsequent discovery was not knowingly assumed. *Cf. State Savings Bank* v. *Bull* (1901) 129 Mich. 193, 88 N. W. 471; *Masonic Life Ass'n* v. *Crandell* (1896) 9 App. Div. 400, 41 N. Y. Supp. 491; but *cf. McArthur* v. *Luce* (1880) 43 Mich. 435, 5 N. W. 451. If, however, as seems more probable, the company made the payment realizing that the trunk might eventually be found, it consciously assumed a risk that makes the payment conclusive. *Cf. Insurance Co.* v. *Chittenden* (1907) 134 Iowa 613, 112 N. W. 96; *Sears* v. *Grand Lodge A. O. U. W.* (1900) 163 N. Y. 374, 57 N. E. 618.